

In the Matter of)
)
Implementation of the Commercial Spectrum) WT Docket No. 05-211
Enhancement Act and Modernization of the)
Commission's Competitive Bidding Rules and)
Procedures)

To: The Commission

Dobson Communications Corporation (“Dobson”) hereby submits its comments in response to the Commission’s *Further Notice of Proposed Rule Making* concerning the “designated entity” (“DE”) auction rules.¹ For the reasons set forth below, Dobson believes that if the Commission imposes new restrictions on designated entity benefits if an otherwise qualified designated entity has “a ‘material relationship’ with a ‘large in-region incumbent wireless service provider,’”² then those same restrictions must be imposed on designated entity that have material relationships with any well-funded investor group with a strategic business interest in the use of the spectrum.

In filings with the Commission, Council Tree Communications has expressed concerns that “large carriers [have] structured their relationships with designated entities as a means to realize for themselves the benefits and opportunities that the Commission had intended for small

¹ *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, *Further Notice of Proposed Rulemaking*, FCC 06-8 (rel. Feb. 3, 2006) (“*FNPRM*”), summarized, 71 Fed. Reg. 6992 (Feb. 10, 2006).

² *FNPRM* at ¶ 1.

businesses.”³ Based on these concerns, the FCC has tentatively concluded in this proceeding that it should restrict the availability of DE benefits to otherwise qualified DEs that partner with large in-region wireless service providers. In contrast, the Commission merely seeks comment as to whether similar restrictions should be placed on DEs that partner with other large companies that are not in-region wireless carriers.

If a record in this proceeding is developed that demonstrates that a change in the FCC’s rules is even required to further the goals of the DE program, Dobson respectfully submits that any restrictions on DE benefits that are deemed appropriate if “large” entities invest in DEs should apply to any large, well-funded investor with a strategic interest in the use of the spectrum. If it is proven true that the benefits designed for small businesses are instead being realized by large strategic investors, it surely should not matter whether that investor is an in-region incumbent wireless service provider or not. In fact, the FNPRM offers nothing that would justify providing large entities like Microsoft, Google, Comcast, Time Warner or other large non-wireless carriers with the opportunity to strategically advance their own spectrum use interests by partnering with DEs while at the same time denying wireless carriers those same opportunities. Indeed, there is no reason to suspect that the behavior of a large non-carrier that invests in a DE applicant in order to help that DE enter an auction and participate in the provision of spectrum-based services would be any different than that of a large carrier.

If the Commission is indeed unhappy with the results of its decade-long DE program, or believes that notwithstanding the investments made by large wireless carriers and others in the many DEs who have successfully enhanced their business standing with such support, further restrictions on investment in small businesses are needed, then it should reform the DE attribution rules themselves, to be applied equally to all non-controlling investors. There is

³ *Id.* at ¶ 8.

simply no basis for targeting only a subset of large companies to whom it wishes to deny DE partnering opportunities. In fact, there is nothing in the *FNPRM* that suggests that the concerns that Council Tree has expressed would be ameliorated by applying the proposed restriction only to one group of strategic investors and not another. In short, adoption of the Commission's tentative conclusion in this proceeding would amount to arbitrary and capricious rule making.

The express purpose of the proposed rule is “to address any concerns that our designated entity program may be subject to potential abuse from larger corporate entities.”⁴ This purpose can not be advanced solely by adopting the tentative conclusion in this proceeding without also restricting the availability of DE benefits to all “large corporate entities.” Chairman Martin has appropriately asked, “Why single out large wireless carriers alone for this kind of treatment and allow large wireline carriers, cable companies, satellite providers, and other communications companies to continue to participate in a program for small businesses?”⁵ If the Commission seeks to ensure that the DE program is not “subject to potential abuse from larger corporate entities,” it should not limit the proposed restriction to any particular class of wireless service providers or even to all large communications companies. It should instead apply the restriction to all “larger corporate entities.”

⁴ *Id.* at ¶ 10.

⁵ *Id.*, Statement of Chairman Kevin J. Martin.

In light of the foregoing, Dobson therefore urges the Commission, if it is to make changes in the DE rules, to apply those changes to all large entities, regardless of whether those entities are wireless service providers or not.

Respectfully submitted,

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